



The Commonwealth of Massachusetts
DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY

D.T.E. 03-34

November 20, 2003

Petition of Western Massachusetts Electric Company for approval of its Transition Charge Reconciliation filing for the period January 1, 2002 through December 31, 2002.

HEARING OFFICER RULING GRANTING PETITION TO INTERVENE
OF WESTERN MASSACHUSETTS INDUSTRIAL CUSTOMERS GROUP

I. PROCEDURAL HISTORY

On September 23, 2003, pursuant to G.L. c. 164, § 1A(a), 220 C.M.R. § 11.03(4) and the Restructuring Settlement Agreement approved by the Department of Telecommunications and Energy (“Department”) in Western Massachusetts Electric Company, D.T.E. 97-120-E (2000), Western Massachusetts Electric Company (“WMECo” or “Company”) submitted an amended reconciliation filing for the calendar year 2002 to reflect the Department’s directives in Western Massachusetts Electric Company, D.T.E. 01-36/02-20 (2003). This filing was docketed by the Department as D.T.E. 03-34.

The Department issued an Order of Notice (“Notice”) on October 3, 2003. WMECo was required to serve a copy of the Notice on the Chairmen, Board of Selectmen, Mayors, Town Clerks, and City Clerks of the cities and towns in the Company’s service area as well as to provide a copy of the Notice to all participants in D.T.E. 97-120, D.T.E. 00-33, and D.T.E. 01-36/02-20. The Notice specifically stated that any petitions to intervene must be received by the Department no later than the close of business October 27, 2003.

On October 27, 2003, the Office of the Attorney General (“Attorney General”) filed his notice on intervention. The same day, General Electric Company, Meadwestvaco Corporation, and Solutia, Inc., collectively the Western Massachusetts Industrial Customers Group (“WMICG”) filed with the Department a petition to intervene (“Petition”). WMICG argues that it purchases large amounts of electricity and distribution service under various tariff rates from WMECo, and that it has an ongoing interest in participating in proceedings to reconcile WMECo’s transition charges (Petition at 1). WMICG states that it has been permitted to intervene and participate in numerous WMECo rate filings, most notably D.T.E. 97-120 (Petition at 1). WMICG asserts that it has an interest in determining the proper way to reflect an over-collection through the end of calendar year 2002 of \$28 million as alleged by WMECo in its filing (Petition at 1). Further, WMICG seeks to reduce the transition charge due to a proposed increase in the standard offer costs filed by WMECo to take effect on January 1, 2004, and contends that the Department should make an initial determination in this proceeding that any portion of the over-recovery be used to offset any increase in rates for 2004 (Petition at 2). WMICG notes that the interest of industrial customers is not adequately represented by the Attorney General, who primarily represents the interests of residential customers (Petition at 2).

On October 28, 2003, the Department conducted a public hearing and procedural conference. The Attorney General offered no objection to the Petition (Tr. at 7). The Company, while not objecting to the Petition, noted its objection to discussion of any materials beyond the scope of reconciling the transition charge for calendar year 2002 (Tr. at 7). The Company stated that the Department will conduct a separate proceeding to determine the propriety of any standard offer costs for calendar year 2004, and therefore the scope of the proceeding should be limited to reconciling the transition charge for calendar year 2002

(Tr. at 7, 9).

II. STANDARD OF REVIEW

The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. §1.03(1)(b); see also G.L. c. 30A, § 10. In interpreting this standard, the Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. Attorney General v. Department of Public Utilities, 390 Mass. 208, 216 (1983); Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad but not unlimited discretion), cert. denied, 439 U.S. 921 (1978); see also Robinson v. Department of Public Utilities, 835 F. 2d 19 (1st Cir. 1987). The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); Boston Edison, 375 Mass. 1, 45. A petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant limited participation. Boston Edison, 375 Mass. 1, 45. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings. Id.

III. ANALYSIS & FINDINGS

WMICG contends that its interests regarding the reconciliation of WMECo's transition charges for calendar year 2002 will not be adequately represented, since the Attorney General primarily represent the interests of residential, not commercial, ratepayers (Petition at 2). WMICG asserts that it has a unique interest in determining the proper way to reflect an over-collection through the end of calendar year 2002 of \$28 million as alleged by WMECo in its filing (id. at 1). Further, WMICG's petition is consistent with the Department's allowance of participation in prior WMECo rate filings, especially D.T.E. 97-120.

In total, these grounds are consistent with the Department standard that WMICG must demonstrate that its interests will not be adequately represented by the Attorney General's participation in this proceeding. See, e.g., New England Telephone & Telegraph Company, D.P.U. 94-50, at 3-4, Order on the Late-Filed Petitions to Intervene of IBEW Locals 2222 and 2322, and Mark Brown (1994); New England Telephone & Telegraph Company, D.P.U. 91-30 at 3, Appeal of Hearing Officer Ruling on Motion to Compel Responses and Petition to Intervene (May 31, 1991); and New England Telephone and Telegraph Company, D.P.U. 89-300, Hearing Officer Ruling on Business Telecommunications Users Group Petition to Intervene (February 16, 1990). While WMICG's Petition is generally consistent with Department precedent and practice, WMICG raises several issues in its Petition that are beyond the scope of investigation in this proceeding. WMICG's intervention in this proceeding will be limited to the Company's transition costs from calendar year 2002 and any

compliance issues that may arise in this docket as a result of the Department's directives in D.T.E. 01-36/02-20.

IV. RULING

For all of the above reasons, the Petition for Intervention of General Electric Company, Meadwestvaco Corporation, and Solutia, Inc., collectively the Western Massachusetts Industrial Customers Group, with regard to D.T.E. 03-34, is hereby GRANTED. WMICG will be added to the service list and will be entitled to participate in all aspects of this proceeding, as described above.

Under the provisions of 220 C.M.R., § 1.06(d)(3), any affected person may appeal this ruling to the Commission by filing a written appeal with supporting documentation by November 26, 2003. A copy of this ruling must accompany any appeal. A response to any appeal must be filed by December 4, 2003.